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AMERICAN GENERAL LIFE INSURANCE COMPANY

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA –WESTERN DIVISION

S&S PAVING INC., AND JOSE
HURTADO,

Plaintiffs,

v.

AMERICAN GENERAL LIFE
INSURANCE COMPANY,

Defendant

Case No. 2:16-cv-02933-FMO-JC

STIPULATED PROTECTIVE ORDER

[CHANGES MADE BY COURT TO
PARAGRAPHS 1.1, 3, 7.2(h), 9(c), 12.3,
and Exhibit A heading]

1. INTRODUCTION

1.1 PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the Court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket

1 protections on all disclosures or responses to discovery and that the protection it affords
2 from public disclosure and use extends only to the limited information or items that are
3 entitled to confidential treatment under the applicable legal principles. The parties further
4 acknowledge, as set forth in Section 12.3, below, that this Stipulated Protective Order
5 does not entitle them to file confidential information under seal. Rather, when the parties
6 seek permission from the court to file material under seal, the parties must comply with
7 Civil Local Rule 79-5 and with any pertinent orders of the assigned District Judge and
8 Magistrate Judge.

9 1.2 GOOD CAUSE STATEMENT

10 This case involves a dispute over life insurance policy no. 1412934 (the “Policy”)
11 insuring the life of Larry Greenspan (the “Insured”). Plaintiff S&S Paving, Inc. (“S&S
12 Paving”) was designated as the primary beneficiary of the Policy, and Plaintiff Jose
13 Hurtado (collectively with S&S Paving, “Plaintiffs”) is a third party beneficiary of the
14 Policy. Plaintiffs allege American General Life Insurance Company (“American
15 General”) wrongfully denied their claim for the Policy benefit following the death of the
16 Insured, and bring claims for breach of contract and insurance bad faith.

17 Due to the nature of the claims and defenses asserted, the Parties anticipate
18 discovery that may potentially violate the right to privacy of the Parties as well as
19 confidentiality agreements with third parties. Specifically, American General anticipates
20 seeking discovery regarding the personal records of Plaintiffs. Plaintiffs anticipate seeking
21 discovery regarding potentially confidential manuals, guidelines, and internal procedures
22 of American General that includes confidential and proprietary information of American
23 General, production of which may violate confidentiality agreements between American
24 General and third parties. Plaintiffs and American General also anticipate seeking
25 potentially confidential, private and medical information of third parties, including the
26 Insured.

27 Thus, the parties respectfully request that the following Stipulated Protective Order
28 be entered in this matter.

1 **2. DEFINITIONS**

2 2.1 Action: Case No. 2:16-cv-02933-FMO-JC

3 2.2 Challenging Party: None.

4 2.3 “CONFIDENTIAL” Information or Items: information (regardless of how it
5 is generated, stored or maintained) or tangible things that qualify for protection under
6 Federal Rule of Civil Procedure 26(c), and as specified above in the Good Cause
7 Statement.

8 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as their
9 support staff).

10 2.5 Designating Party: a Party or Non-Party that designates information or items
11 that it produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

12 2.6 Disclosure or Discovery Material: all items or information, regardless of the
13 medium or manner in which it is generated, stored, or maintained (including, among other
14 things, testimony, transcripts, and tangible things), that are produced or generated in
15 disclosures or responses to discovery in this matter.

16 2.7 Expert: a person with specialized knowledge or experience in a matter
17 pertinent to the litigation who has been retained by a Party or its counsel to serve as an
18 expert witness or as a consultant in this Action.

19 2.8 House Counsel: attorneys who are employees of a party to this Action. House
20 Counsel does not include Outside Counsel of Record or any other outside counsel.

21 2.9 Non-Party: any natural person, partnership, corporation, association, or other
22 legal entity not named as a Party to this action.

23 2.10 Outside Counsel of Record: attorneys who are not employees of a party to
24 this Action but are retained to represent or advise a party to this Action and have appeared
25 in this Action on behalf of that party or are affiliated with a law firm which has appeared
26 on behalf of that party, and includes support staff.

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1 2.11 Party: any party to this Action, including all of its officers, directors,
2 employees, consultants, retained experts, and Outside Counsel of Record (and their
3 support staffs).

4 2.12 Producing Party: a Party or Non-Party that produces Disclosure or Discovery
5 Material in this Action.

6 2.13 Professional Vendors: persons or entities that provide litigation support
7 services (e.g., photocopying, videotaping, translating, preparing exhibits or
8 demonstrations, and organizing, storing, or retrieving data in any form or medium) and
9 their employees and subcontractors.

10 2.14 Protected Material: any Disclosure or Discovery Material that is designated
11 as "CONFIDENTIAL."

12 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material from
13 a Producing Party.

14 **3. SCOPE**

15 The protections conferred by this Stipulation and Order cover not only Protected
16 Material (as defined above), but also (1) any information copied or extracted from
17 Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected
18 Material; and (3) any deposition testimony, conversations, or presentations by Parties or
19 their Counsel that might reveal Protected Material, other than during a court hearing or at
20 trial.

21 Any use of Protected Material during a court hearing or at trial shall be governed by
22 the orders of the presiding judge. This Order does not govern the use of Protected
23 Material during a court hearing or at trial.

24 **4. DURATION**

25 Even after final disposition of this litigation, the confidentiality obligations imposed
26 by this Order shall remain in effect until a Designating Party agrees otherwise in writing
27 or a court order otherwise directs. Final disposition shall be deemed to be the later of (1)
28 dismissal of all claims and defenses in this Action, with or without prejudice; and (2) final

judgment herein after the completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action, including the time limits for filing any motions or applications for extension of time pursuant to applicable law.

5. DESIGNATING PROTECTED MATERIAL

5.1 Exercise of Restraint and Care in Designating Material for Protection.

Each Party or Non-Party that designates information or items for protection under this Order must take care to limit any such designation to specific material that qualifies under the appropriate standards. The Designating Party must designate for protection only those parts of material, documents, items, or oral or written communications that qualify so that other portions of the material, documents, items, or communications for which protection is not warranted are not swept unjustifiably within the ambit of this Order.

Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown to be clearly unjustified or that have been made for an improper purpose (e.g., to unnecessarily encumber the case development process or to impose unnecessary expenses and burdens on other parties) may expose the Designating Party to sanctions.

If it comes to a Designating Party's attention that information or items that it designated for protection do not qualify for protection, that Designating Party must promptly notify all other Parties that it is withdrawing the inapplicable designation.

5.2 Manner and Timing of Designations. Except as otherwise provided in this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered, Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so designated before the material is disclosed or produced.

Designation in conformity with this Order requires:

(a) for information in documentary form (e.g., paper or electronic documents, but excluding transcripts of depositions), that the Producing Party affix at a minimum, the legend "CONFIDENTIAL" (hereinafter "CONFIDENTIAL legend"), to each page that contains protected material. If only a portion or portions of the material on a page

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1 qualifies for protection, the Producing Party also must clearly identify the protected
2 portion(s) (e.g., by making appropriate markings in the margins).

3 A Party or Non-Party that makes original documents available for inspection need
4 not designate them for protection until after the inspecting Party has indicated which
5 documents it would like copied and produced. During the inspection and before the
6 designation, all of the material made available for inspection shall be deemed
7 “CONFIDENTIAL.” After the inspecting Party has identified the documents it wants
8 copied and produced, the Producing Party must determine which documents, or portions
9 thereof, qualify for protection under this Order. Then, before producing the specified
10 documents, the Producing Party must affix the “CONFIDENTIAL legend” to each page
11 that contains Protected Material. If only a portion or portions of the material on a page
12 qualifies for protection, the Producing Party also must clearly identify the protected
13 portion(s) (e.g., by making appropriate markings in the margins).

14 (b) for testimony given in depositions that the Designating Party identify the
15 Disclosure or Discovery Material on the record, before the close of the deposition all
16 protected testimony.

17 (c) for information produced in some form other than documentary and for any
18 other tangible items, that the Producing Party affix in a prominent place on the exterior of
19 the container or containers in which the information is stored the legend
20 “CONFIDENTIAL.” If only a portion or portions of the information warrants protection,
21 the Producing Party, to the extent practicable, shall identify the protected portion(s).

22 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure
23 to designate qualified information or items does not, standing alone, waive the
24 Designating Party’s right to secure protection under this Order for such material. Upon
25 timely correction of a designation, the Receiving Party must make reasonable efforts to
26 assure that the material is treated in accordance with the provisions of this Order.

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1 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

2 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation
3 of confidentiality at any time that is consistent with the Court's Scheduling Order.

4 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution
5 process (and, if necessary, file a discovery motion) under Local Rule 37-1 et seq.

6 6.3 The burden of persuasion in any such challenge proceeding shall be on the
7 Designating Party. Frivolous challenges, and those made for an improper purpose (e.g., to
8 harass or impose unnecessary expenses and burdens on other parties) may expose the
9 Challenging Party to sanctions. Unless the Designating Party has waived or withdrawn the
10 confidentiality designation, all parties shall continue to afford the material in question the
11 level of protection to which it is entitled under the Producing Party's designation until the
12 Court rules on the challenge.

13 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

14 7.1 Basic Principles. A Receiving Party may use Protected Material that is
15 disclosed or produced by another Party or by a Non-Party in connection with this Action
16 only for prosecuting, defending, or attempting to settle this Action. Such Protected
17 Material may be disclosed only to the categories of persons and under the conditions
18 described in this Order. When the Action has been terminated, a Receiving Party must
19 comply with the provisions of section 13 below (FINAL DISPOSITION).

20 Protected Material must be stored and maintained by a Receiving Party at a location
21 and in a secure manner that ensures that access is limited to the persons authorized under
22 this Order.

23 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise
24 ordered by the court or permitted in writing by the Designating Party, a Receiving Party
25 may disclose any information or item designated "CONFIDENTIAL" only to:

26 (a) the Receiving Party's Outside Counsel of Record in this Action, as well as
27 employees of said Outside Counsel of Record to whom it is reasonably necessary to
28 disclose the information for this Action;

(b) the officers, directors, and employees (including House Counsel) of the Receiving Party to whom disclosure is reasonably necessary for this Action;

(c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is reasonably necessary for this Action and who have signed the “Agreement to Protect Confidential Information” (Exhibit A);

(d) the Court and its personnel;

(e) court reporters and their staff;

(f) professional jury or trial consultants, mock jurors, and Professional Vendors to whom disclosure is reasonably necessary for this Action and who have signed the “Agreement to Protect Confidential Information” (Exhibit A);

(g) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information;

(h) during their depositions, witnesses, and attorneys for witnesses, in the Action to whom disclosure is reasonably necessary provided: (1) the deposing party requests that the witness sign the “Acknowledgment and Agreement to Be Bound” (Exhibit A); and (2) they will not be permitted to keep any confidential information unless they sign the “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the court. Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material may be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Stipulated Protective Order; and

(i) any mediator or settlement officer, and their supporting personnel, mutually agreed upon by any of the parties engaged in settlement discussions.

8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

If a Party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this Action as “CONFIDENTIAL,” that Party must:

1 (a) promptly notify in writing the Designating Party. Such notification shall include
2 a copy of the subpoena or court order;

3 (b) promptly notify in writing the party who caused the subpoena or order to issue
4 in the other litigation that some or all of the material covered by the subpoena or order is
5 subject to this Protective Order. Such notification shall include a copy of this Stipulated
6 Protective Order; and

7 (c) cooperate with respect to all reasonable procedures sought to be pursued by the
8 Designating Party whose Protected Material may be affected.

9 If the Designating Party timely seeks a protective order, the Party served with the
10 subpoena or court order shall not produce any information designated in this action as
11 “CONFIDENTIAL” before a determination by the court from which the subpoena or
12 order issued, unless the Party has obtained the Designating Party’s permission. The
13 Designating Party shall bear the burden and expense of seeking protection in that court of
14 its confidential material and nothing in these provisions should be construed as
15 authorizing or encouraging a Receiving Party in this Action to disobey a lawful directive
16 from another court.

17 **9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE**
18 **PRODUCED IN THIS LITIGATION**

19 (a) The terms of this Order are applicable to information produced by a Non-Party
20 in this Action and designated as “CONFIDENTIAL.” Such information produced by Non-
21 Parties in connection with this litigation is protected by the remedies and relief provided
22 by this Order. Nothing in these provisions should be construed as prohibiting a Non-Party
23 from seeking additional protections.

24 (b) In the event that a Party is required, by a valid discovery request, to produce a
25 Non-Party’s confidential information in its possession, and the Party is subject to an
26 agreement with the Non-Party not to produce the Non-Party’s confidential information,
27 then the Party shall:

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1 (1) promptly notify in writing the Requesting Party and the Non-Party that some or
2 all of the information requested is subject to a confidentiality agreement with a Non-Party;

3 (2) promptly provide the Non-Party with a copy of the Stipulated Protective Order
4 in this Action, the relevant discovery request(s), and a reasonably specific description of
5 the information requested; and

6 (3) make the information requested available for inspection by the Non-Party, if
7 requested.

8 (c) If a Non-Party represented by counsel fails to commence the process called for
9 by Local Rules 45-1 and 37-1, et seq. within 14 days of receiving the notice and
10 accompanying information or fails contemporaneously to notify the Receiving Party that
11 it has done so, the Receiving Party may produce the Non-Party's confidential information
12 responsive to the discovery request. If an unrepresented Non-Party fails to seek a
13 protective order from this court within 14 days of receiving the notice and accompanying
14 information, the Receiving Party may produce the Non-Party's confidential information
15 responsive to the discovery request. If the Non-Party timely seeks a protective order, the
16 Receiving Party shall not produce any information in its possession or control that is
17 subject to the confidentiality agreement with the Non-Party before a determination by the
18 court unless otherwise required by the law or court order. Absent a court order to the
19 contrary, the Non-Party shall bear the burden and expense of seeking protection in this
20 court of its Protected Material.

21 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

22 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
23 Protected Material to any person or in any circumstance not authorized under this
24 Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing
25 the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all
26 unauthorized copies of the Protected Material, (c) inform the person or persons to whom
27 unauthorized disclosures were made of all the terms of this Order, and (d) request such

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1 person or persons to execute the “Agreement to Protect Confidential Information” that is
 2 attached hereto as Exhibit A.

3 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
 4 **PROTECTED MATERIAL**

5 When a Producing Party gives notice to Receiving Parties that certain inadvertently
 6 produced material is subject to a claim of privilege or other protection, the obligations of
 7 the Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B).
 8 This provision is not intended to modify whatever procedure may be established in an e-
 9 discovery order that provides for production without prior privilege review. Pursuant to
 10 Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an agreement on the
 11 effect of disclosure of a communication or information covered by the attorney-client
 12 privilege or work product protection, the parties may incorporate their agreement in the
 13 stipulated protective order submitted to the court.

14 **12. MISCELLANEOUS**

15 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
 16 person to seek its modification by the Court in the future.

17 12.2 Right to Assert Other Objections. By stipulating to the entry of this
 18 Protective Order no Party waives any right it otherwise would have to object to disclosing
 19 or producing any information or item on any ground not addressed in this Stipulated
 20 Protective Order. Similarly, no Party waives any right to object on any ground to use in
 21 evidence of any of the material covered by this Protective Order.

22 12.3 Filing Protected Material. A Party that seeks to file under seal any Protected
 23 Material must comply with Civil Local Rule 79-5 and with any pertinent orders of the
 24 assigned District Judge and Magistrate Judge. Protected Material may only be filed
 25 under seal pursuant to a court order authorizing the sealing of the specific Protected
 26 Material at issue. If a Party’s request to file Protected Material under seal is denied by the
 27 court, then the Receiving Party may file the information in the public record unless
 28 otherwise instructed by the court.

1 **13. FINAL DISPOSITION**

2 After the final disposition of this Action, as defined in paragraph 4, within 60 days
3 of a written request by the Designating Party, each Receiving Party must return all
4 Protected Material to the Producing Party or destroy such material. As used in this
5 subdivision, "all Protected Material" includes all copies, abstracts, compilations,
6 summaries, and any other format reproducing or capturing any of the Protected Material.
7 Whether the Protected Material is returned or destroyed, the Receiving Party must submit
8 a written certification to the Producing Party (and, if not the same person or entity, to the
9 Designating Party) by the 60 day deadline that (1) identifies (by category, where
10 appropriate) all the Protected Material that was returned or destroyed and (2) affirms that
11 the Receiving Party has not retained any copies, abstracts, compilations, summaries or any
12 other format reproducing or capturing any of the Protected Material. Notwithstanding this
13 provision, Counsel are entitled to retain an archival copy of all pleadings, motion papers,
14 trial, deposition, and hearing transcripts, legal memoranda, correspondence, deposition
15 and trial exhibits, expert reports, attorney work product, and consultant and expert work
16 product, even if such materials contain Protected Material. Any such archival copies that
17 contain or constitute Protected Material remain subject to this Protective Order as set forth
18 in Section 4 (DURATION).

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1 14. Any willful violation of this Order may be punished by civil or criminal
2 contempt proceedings, financial or evidentiary sanctions, reference to disciplinary
3 authorities, or other appropriate action at the discretion of the Court.

4 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.
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6 Dated: September 12, 2016

EDISON, McDOWELL & HETHERINGTON LLP

8 By: /s/ Edward J. Valdespino

9 Raymond J. Tittmann

Jodi K. Swick

10 Edward J. Valdespino

11 Attorneys for Defendant
12 AMERICAN GENERAL LIFE INSURANCE
13 COMPANY

14
15 Dated: September 12, 2016

KANTOR & KANTOR, LLP

17 By: /s/ Glenn R. Kantor (w/ permission)

18 Glenn R. Kantor

Andrew M. Kantor

19 Attorneys for Plaintiffs
20 S&S PAVING INC., AND JOSE HURTADO
21
22

23 **PURSUANT TO STIPULATION, AS MODIFIED, IT IS SO ORDERED.**
24

25 DATED: September 15, 2016

/s/

26 Hon. Jacqueline Chooljian

27 United States Magistrate Judge
28

EXHIBIT A
AGREEMENT TO PROTECT CONFIDENTIAL INFORMATION

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA –WESTERN DIVISION

S&S PAVING INC., AND JOSE
HURTADO,

Plaintiffs,

v.

AMERICAN GENERAL LIFE
INSURANCE COMPANY,

Defendant

Case No. 2:16-cv-02933-FMO-JC

**STIPULATED PROTECTIVE
ORDER**

Complaint Filed: April 28, 2016

I, _____, state that:

1. I have received a copy of the Stipulated Protective Order Governing the Production and Exchange of Confidential Information (the “**Protective Order**”) entered in the above-entitled action.

2. I have carefully read and understand the provisions of the Protective Order.

3. I will comply with and agree to be bound by all of the provisions of the Protective Order.

4. I will hold in confidence, will not disclose to anyone not qualified under the Protective Order, and will use only for purposes of this action, any Confidential Information that is disclosed to me.

5. I will return all Confidential Information that comes into my possession, and documents or things that I have prepared relating thereto, to counsel for the party by whom I am employed or retained, or to counsel from whom I received the Confidential Information.

6. I hereby submit to the jurisdiction of this court for the purpose of enforcement of the Protective Order in this action.

Executed on: _____
(Date) (Signature)